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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JIMMY LEE NELSON,

*Petitioner,*

vs.

ATTORNEY GENERAL, *et al.*,

*Respondents.*

3:06-cv-00129-LRH-VPC

ORDER

15 This closed represented habeas matter under 28 U.S.C. § 2254 currently is before the Court on,  
16 *inter alia*, a motion (#56) to reopen filed by petitioner in proper person. Petitioner additionally seeks,  
17 in his combined filings, substitution of counsel.

18 The Court provided current federal habeas counsel a fourteen-day opportunity to file a motion,  
19 if any, requesting relief appropriate to the circumstances with regard to the representation. No motion  
20 has been filed. However, it is not readily apparent to the Court how the factual issues presented on the  
21 motion to reopen can be litigated through current counsel. Petitioner alleges *pro se* that: (a) he had a  
22 viable claim of actual innocence to overcome the untimeliness of his petition that he presented to  
23 current federal habeas counsel, but that (b) counsel did not pursue the issue due to alleged ineffective  
24 assistance of counsel. It is not immediately clear to the Court how current counsel can litigate her own  
25 alleged ineffectiveness. It would appear that any failure of current counsel on the present motion to  
26 present evidence either of alleged actual innocence or of her own alleged ineffectiveness would be  
27 subject to being at least alleged to be due to a conflict of interest. On the other hand, the Court is not  
28 going to allow petitioner to pursue relief *pro se* while he is represented by appointed counsel.

1 IT THEREFORE IS ORDERED, pursuant to the Court's supervisory authority, that, within  
2 **fourteen (14) days** of entry of this order, petitioner's counsel SHALL FILE a response to this order and  
3 shall SHOW CAUSE why petitioner's request for substitution of counsel should not be granted. Unlike  
4 the prior order, counsel must file a written response to this order. The response and any request to  
5 withdraw filed must be served by mail on petitioner in proper person at his current address in addition  
6 to electronically on opposing counsel.

7 IT FURTHER IS ORDERED that the Clerk shall send a hard copy of this order by mail to  
8 petitioner **Jimmy Lee Nelson, #64886, Northern Nevada Correctional Center, P.O. Box 7000,**  
9 **Carson City, NV 89702-7000**, and the Clerk shall clearly and specifically reflect on the docket sheet  
10 that a hard copy of the order has been mailed to petitioner personally at that address.

11 This matter remains closed. Nothing herein signifies that the matter has been reopened, as the  
12 motion to reopen remains for consideration following resolution of representation issues.

13 DATED this 29th day of June, 2012.

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17 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE  
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